

MURPHY RANCH RESIDENTIAL PROJECT

Water Supply Assessment (for compliance with SB 610 and 221 of 2001)

March 21, 2006

Reviewed by _____
Darryl Wong, Utility Engineer

Date

Approved By _____
Greg Armendariz, Public Works Director

Date

MURPHY RANCH RESIDENTIAL PROJECT

WATER SUPPLY ASSESSMENT

Summary

This assessment is completed in compliance with Senate Bill 610 and Senate Bill 221. SB 610 requires a water supply assessment to be included in any environmental documentation for projects exceeding 500 dwelling units. Under SB 221, approval by a City or County of certain residential subdivision requires an affirmative written verification of sufficient water supply.

The assessment was completed using the City of Milpitas 2005 Urban Water Management Plan, the Santa Clara Valley Water District 2005 Urban Water Management Plan and the City of Milpitas 2002 Water Master Plan. The finding is that sufficient supply is available to provide water to the proposed development.

Introduction

The Murphy Ranch Residential Project, proposed by David J. Powers and Associates, Inc., consists of 285 attached townhomes and 374 apartments for a total of 659 residential units on 22.74 gross acres. The project site includes Assessor Parcel Numbers 8601041 and 8601042 bounded by Technology Drive to the North, Murphy Ranch Road to the East, the Hetch Hetchy Right-of-Way to the South and Coyote Creek to the West. This project exceeds the threshold of 500 dwelling units and therefore requires a Water Supply Assessment under the provisions of California Senate Bill 610 and a written verification of sufficient water supply under California Senate Bill 221. The Water Supply Assessment and written verification shall include:

- 1. Identification and documentation of water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project.*
- 2. A discussion with regard to whether the public water system's total projected water supplies available during normal, single dry and multiple dry water years during a 20 year projection will meet the projected water demand associated with the project, in addition to the public water system's existing and planned future uses.*

As lead agency, and water service supplier for the Murphy Ranch residential project, the City of Milpitas prepared this water supply assessment in compliance with SB 610, SB 221 and the California Environmental Quality Act. The findings of this assessment shall be submitted to the City Council for approval and included in the environmental review process.

The City's most current Urban Water Management Plan, adopted in 2005, did not fully account for water use associated with this project as the parcels in question were

anticipated to have an industrial land use. The proposed project would result in a net increase of 0.15 mgd. The increase in water demand was calculated based upon the number of proposed dwelling units and proposed landscape square footage multiplied by water use factors identified in the 2002 Water Master Plan. It also includes 6.1 % average unaccounted for water.

Water Supply Assessment

This section includes an evaluation of the City of Milpitas capability to provide water to the proposed Murphy Ranch Residential Project described above. In accordance with SB 610 and SB 221, the assessment consists of documenting the following:

- (1) Water Supplies
 - a. Wholesale Sources
 - b. Wholesale Supplies
- (2) Demand Analysis
 - a. Murphy Ranch Project Water Demands
 - b. Urban Water Management Plan Projection
 - c. Net Increase due to Murphy Ranch Project
- (3) Comparison of Supply and Demand under Normal, Single Dry, and Multiple Dry Year Conditions
- (4) Determination of sufficient or insufficient water supply

1. WATER SUPPLIES

Wholesaler Source: The City of Milpitas purchases potable water from two wholesalers, the San Francisco Public Utilities Commission (SFPUC) and the Santa Clara Valley Water District (SCVWD). About 60% of Milpitas' drinking water is from SFPUC and the remaining 40% is from the SCVWD. The City also purchases recycled water through the South Bay Water Recycling Program for irrigation purposes only.

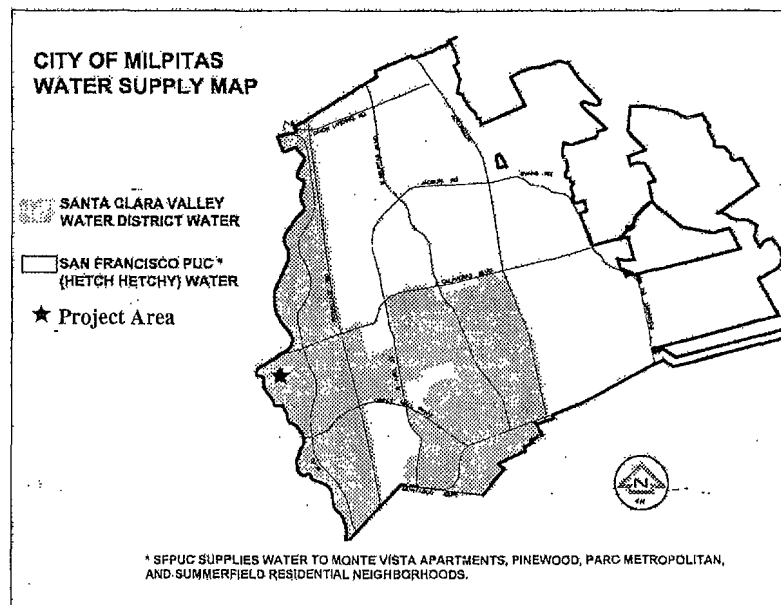
Annual supply guarantee is established by contractual agreements between the City and the water wholesalers. The SFPUC and SCVWD will continue to supply all potable water over the next 30 years. No new water sources will be added. However, two wells (Pinewood Well and future Curtis well) will be available for emergency purposes only.

Table 1 – Wholesale Supply Source

Supply Source	Entitlement	Right	Contract	Ever Used	Will Supply Project
SCVWD			Yes	Yes	Yes
SFPUC			Yes	Yes	No
Recycled Water			Yes	Yes	Yes common area landscape only
Wells (Emergency)		Yes		Yes	No

As shown in Figure 1, the City distributes SFPUC wholesale water to areas South of Calaveras Blvd and East of I-680 as well as areas North of Calaveras Blvd and East of I-880. The City distributes SCVWD wholesale water to all areas West of I-880 as well as those areas south of Calaveras Blvd and West of I-680 excluding the Monte Vista Apartments, Pinewood, Parc Metro, Parc Place, and Summerfield Residential neighborhoods. These two sources are not blended under normal operating conditions, however, they can be physically interconnected to provide emergency water supply if needed.

Figure 1: Water Source Map



The proposed Murphy Ranch Residential project is located West of I-880 and South of Calaveras Blvd. within the City's SCVWD wholesale distribution area. Therefore, this evaluation will assess project impacts related to water supply and demand within the SCVWD distribution area only.

Wholesale Supply. The City began receiving SCVWD water in August 1993. SCVWD's water supply system is comprised of both treatment and distribution facilities that include imported supply facilities, raw water conveyance facilities, treatment plants, local reservoirs, treated water transmission lines, and the groundwater basin.

SCVWD supplies water to local water retail agencies that, in turn, provide it to their customers in Santa Clara County. In order to maintain maximum efficiency and flexibility, the water supply comes from a variety of sources. Nearly half is from local groundwater aquifers, and more than half is imported from the Sierra Nevada through pumping stations in the Sacramento-San Joaquin River Delta. Both groundwater and imported water are sold to retailers. SCVWD also manages the groundwater basin to the benefit of agricultural users and other independent users who pump groundwater.

Local runoff is captured in local SCVWD reservoirs for recharge into the groundwater basin or treatment at one of SCVWD's Water Treatment Plants (WTPs). The total storage capacity of these reservoirs is about 170,000 AF.

The SCVWD operates three water treatment plants (WTP) – Santa Teresa, Rinconada, and Penitencia. Water is provided to the City of Milpitas' SCVWD turnout from the Penitencia WTP or Santa Teresa WTP via the Milpitas Pipeline.

Water purchase from the SCVWD is governed by contract between the SCVWD and the City of Milpitas (Attachment A). The actual contract amount is adjusted periodically based on an annual delivery schedule the City submits every 3 years for the subsequent 3-year period. This schedule is binding for the subsequent 3-year period, and the City's annual purchase must be at least 95% of the maximum year contained in the schedule. The City's monthly "supply guarantee" is at least 15% of the total estimated yearly amount.

Table 2 shows historical purchases from SCVWD. The downward trend is attributed partially to conservation efforts, conversion of potable water irrigation to recycled water irrigation and economic factors.

Table 2 – SCVWD Historical Water Purchases (mgd)

95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05
4.59	5.06	4.59	4.21	4.33	4.53	4.03	3.95	3.91	3.53

City of Milpitas 2005 Urban Water Management Plan Projected Supplies: The City of Milpitas 2005 Urban Water Management plan evaluated current and future water supply and demand in accordance with Section 10631 of the California Water Code. Table 3 below, lists water supplies the City can reasonably expect to receive under "Normal Year" conditions.

**Table 3 – Quantity of Water Received in Normal Year (mgd)
Actual and Projected ^(a)**

Water Supply Sources	94/95	99/00	04/05	09/10	14/15	19/20	24/25	29/30
SCVWD	3.98	4.33	3.53	5.78	6.37	6.63	6.88	7.13

^(a) Source: City of Milpitas 2005 Urban Water Management Plan Table 3-1.

2. WATER DEMANDS

City of Milpitas 2005 Urban Water Management Plan Projected Demands: A variety of demographic factors may affect water use. Section 2.4 of the City of Milpitas 2005 Urban Water Management Plan lists planning assumptions used to project future water demands. Table 4 provides the actual and projected water demands under normal conditions. Water demand includes an average unaccounted for water loss of 6.1%.

**Table 4 – Normal Year Water Demand (mgd)
Actual and Projected ^(a)**

Water Supply Sources	94/95	99/00	04/05	09/10	14/15	19/20	24/25	29/30
SCVWD	3.98	4.33	3.53	5.78	6.37	6.68	6.88	7.13

^(a) Source: City of Milpitas 2005 Urban Water Management Plan Table 3-1.

The City of Milpitas 2005 Urban Water Management Plan assumed land use within the project area would remain consistent with the buildout scenario of the 2002 Water Master Plan. The Master Plan assumed that the project area (assessor parcels 8601041 and 8601042) would be developed with an industrial use by 2008. Water demand assigned to the project area is calculated in Table 5.

**Table 5 – Project Area Water Demands Included In The City of Milpitas
2005 Urban Water Management Plan Demand Calculations ^(a)**

APN Number	Parcel Size (Acres)	Water Use Factor (gpd/acre)	Water Demand (gpd)
8601042	14.09	1250	17,612
8601041	7.59	1250	9,488
Total (gpd)			27,100

^(a) City of Milpitas 2002 Water Master Plan Table 3-1

Project Demand: The proposed Murphy Ranch project consists of 285 Townhouses, 374 apartments and 6.38 acres of irrigated landscape. Projected water demands for this project are shown in Table 6 and are calculated assuming 2.7 residents per unit and a water demand of 90 gallons per capita per day per the City's 2002 Water Master Plan. As indicated in Table 7, the proposed project will result in a 141,331 gpd net increase in water demand (158 Ac-Ft per year). *Adjusting for a 6.1 % average unaccounted for water loss, the project will require an additional supply of 150,512 gpd (169 Ac. Ft. per year).*

Table 6 Murphy Ranch Residential Project Water Demand (gpd)

	Development Density	Water Use Factor	Water Demand (gpd)
Townhouses	285 du	243 gpd/du ^(a)	69,255
Apartments	374 du	243 gpd/du ^(a)	90,882
Landscape	6.38 acre	1300 gpd/acre ^(b)	8,294
Total			168,431

^(a) Calculated based on MFVH water use factor of 9720 gpd/acre per 2002 Water Master Plan Table 3-1. Assumes 40 units per acre.

^(b) City of Milpitas 2002 Water Master Plan Table 3-1.

Table 7 Project Impact on Water Demand

	Water Demand
Murphy Ranch Development Demand	168,431 gpd
- 2005 UWMP projected demand	- 27,100 gpd
Net Increase over 2005 UWMP	141,331 gpd

Table 8 Project Impact on Water Supply

	Water Demand
Murphy Ranch Development Net Increase in Demand	141,331 gpd
6.1 % unaccounted for Water	+ 9,181 gpd
Net Increase over 2005 UWMP	150,512 gpd

$$\text{Demand (Acre Feet)} = 150,512 \text{ gpd} * 365 \text{ d/y} * 1 \text{ hcf}/748 \text{ g} * 1 \text{ Ac Ft}/435.6 \text{ hcf} = 169 \text{ Ac Ft./year}$$

Development of the Murphy Ranch Residential Project is expected to be completed by 2008. The 0.15 mgd. increase in water demand will apply to fiscal years 07/08 and beyond. The 0.15 mgd represents the worst case scenario as common area landscaping will be irrigated with recycled water.

Revised water demand projections (including project demand) are shown in Table 9. The water will be purchased through the Santa Clara Valley Water District. The SCVWD has reviewed and commented on the draft assessment (Attachment B). SCVWD's comments have been incorporated into the final document.

**Table 9 – Projected Water Demand (mgd)
(2005 UWMP plus Project Demand)^(a)**

Water Supply Sources	94/95	99/00	04/05	09/10	14/15	19/20	24/25	29/30
SCVWD	3.98	4.33	3.53	5.93	6.52	6.78	7.03	7.28

^(a) Source: City of Milpitas 2005 Urban Water Management Plan Table 3-1.

3. SUPPLY AND DEMAND COMPARISON FOR NORMAL, SINGLE DRY AND MULTIPLE DRY YEAR'S SUPPLY

Supply Reliability: To maintain water supply reliability and flexibility, SCVWD's water supply includes a variety of sources including local groundwater, imported water, local surface water, and recycled water. SCVWD has an active conjunctive water management program to optimize the use of groundwater and surface water, and to prevent groundwater overdraft and land subsidence.

Long-term planning and modeling analysis performed by SCVWD as part of the Integrated Water Resources Planning Study (IWRP) and the District's 2005 UWMP

indicates that if additional investments are made, future countywide demands can reliably be met. It is the intent of SCVWD to ensure that these additional investments be undertaken in accordance with the IWRP framework, which recommends a flexible resource mix be implemented in phases over the planning horizon. This flexibility allows the District to respond to changing and uncertain future conditions.

The net increase in demand of 169 acre-feet per year associated with the proposed development was not included in the analysis performed for the District's 2005 UWMP. This and other incremental increases in demand, when aggregated, have the potential to change the composition and timing of required future investments. Further analysis, within the structure of the District's long term planning framework, is required to better define the specific projects and project timing in order for the District to meet demands in the future. In addition, provisions of water supply to meet new growth is based upon assumptions (listed in the District 2005 UWMP) and funding for many long-term water supply projects and infrastructure projects has not been secured. However, as the primary water wholesaler in Santa Clara County, the District has a commitment to ensure that water supply is reliable to meet future demands in Santa Clara County, consistent with the County's and cities' General Plans and other appropriate regional and statewide projections.

Per Figures 6-2 through 6-4, and Tables 6-2 through 6-4 (pages 125-128) of the Santa Clara Valley Water District's 2005 Urban Water Management Plan, the SCVWD's supply will be reliable to meet future countywide demands during normal, single-dry and multiple-dry water years. Although this analysis presents projections of future water supply, ongoing coordination with the SCVWD will be necessary to ensure projections are consistent with SCVWD's long-term water management strategies. The City will continue to work with the SCVWD to refine future water supply projections and ensure that long-term planning efforts are consistent. Tables 10 through 12 compare water supply and demand under normal year, single-dry year and multiple-dry year conditions.

Table 10 Projected Normal Water Year SCVWD Service Area Supply and Demand Comparison

Fiscal Year	Supply (mgd)	% of Projected Normal Year	Demand (mgd)	% of Year 04/05	Difference Supply - Demand (mgd)	Difference as % of Supply	Difference as Percent of Demand
09/10	5.93	100.00%	5.93	167.91%	0	0.00%	0.00%
14/15	6.52	100.00%	6.52	184.63%	0	0.00%	0.00%
19/20	6.78	100.00%	6.78	191.99%	0	0.00%	0.00%
24/25	7.03	100.00%	7.03	199.07%	0	0.00%	0.00%
29/30	7.28	100.00%	7.28	206.16%	0	0.00%	0.00%

Table 11 Projected Single-Dry Water Year Citywide Supply and Demand Comparison

Fiscal Year	Supply (mgd)	% of Projected Normal Year	Demand (mgd)	% of Projected Normal Year	Difference Supply - Demand (mgd)	Difference as % of Supply	Difference as % of Demand

Fiscal Year	Supply (mgd)	% of Projected Normal Year	Demand (mgd)	% of Projected Normal Year	Difference Supply Demand (mgd)	Difference as % of Supply	Difference as % of Demand
09/10	5.93	100.00%	5.93	100.00%	0	0.00%	0.00%
14/15	6.52	100.00%	6.52	100.00%	0	0.00%	0.00%
19/20	6.78	100.00%	6.78	100.00%	0	0.00%	0.00%
24/25	7.03	100.00%	7.03	100.00%	0	0.00%	0.00%
29/30	7.28	100.00%	7.28	100.00%	0	0.00%	0.00%

Table 12 Projected Multiple-Dry Water Year Citywide Supply and Demand Comparison

Fiscal Year	Supply (mgd)	% of Projected Normal Year	Demand (mgd)	% of Projected Normal Year	Difference Supply Demand (mgd)	Difference as % of Supply	Difference as % of Demand
05/06	3.98	100.00%	3.98	100.00%	0	0.00%	0.00%
06/07	4.43	100.00%	4.43	100.00%	0	0.00%	0.00%
07/08	5.03	100.00%	5.03	100.00%	0	0.00%	0.00%
08/09	5.48	100.00%	5.48	100.00%	0	0.00%	0.00%
09/10	5.93	100.00%	5.93	100.00%	0	0.00%	0.00%
10/11	6.05	100.00%	6.05	100.00%	0	0.00%	0.00%
11/12	6.16	100.00%	6.16	100.00%	0	0.00%	0.00%
12/13	6.27	100.00%	6.27	100.00%	0	0.00%	0.00%
13/14	6.39	100.00%	6.39	100.00%	0	0.00%	0.00%
14/15	6.52	100.00%	6.52	100.00%	0	0.00%	0.00%
15/16	6.57	100.00%	6.57	100.00%	0	0.00%	0.00%
16/17	6.62	100.00%	6.62	100.00%	0	0.00%	0.00%
17/18	6.68	100.00%	6.68	100.00%	0	0.00%	0.00%
18/19	6.73	100.00%	6.73	100.00%	0	0.00%	0.00%
19/20	6.78	100.00%	6.78	100.00%	0	0.00%	0.00%
20/21	6.83	100.00%	6.83	100.00%	0	0.00%	0.00%
21/22	6.88	100.00%	6.88	100.00%	0	0.00%	0.00%
22/23	6.94	100.00%	6.94	100.00%	0	0.00%	0.00%
23/24	6.99	100.00%	6.99	100.00%	0	0.00%	0.00%
24/25	7.03	100.00%	7.03	100.00%	0	0.00%	0.00%
25/26	7.08	100.00%	7.08	100.00%	0	0.00%	0.00%
26/27	7.13	100.00%	7.13	100.00%	0	0.00%	0.00%
27/28	7.18	100.00%	7.18	100.00%	0	0.00%	0.00%
28/29	7.23	100.00%	7.23	100.00%	0	0.00%	0.00%
29/30	7.28	100.00%	7.28	100.00%	0	0.00%	0.00%

Conclusion

The Santa Clara Valley Water District has a commitment to ensure that water supply is reliable to meet future demands. The City recognizes that, in order to meet this commitment, funding for long-term water supply projects and infrastructure projects must be secured.

This evaluation is based on projections from the City of Milpitas 2005 Urban Water Management Plan, City of Milpitas 2002 Water Master Plan and the Santa Clara Valley

Water District's 2005 Urban Water Management Plan. Based upon evaluation results, the staff of the Utility Engineering Section of the City of Milpitas has determined that there is sufficient water supply to provide service to the Murphy Ranch Residential development project. However, to reduce potable water demand, this development should incorporate water conservation practices to the maximum extent practicable in accordance with City policies.

Attachment A

**Contract Between Santa Clara Valley Water District And
the City of Milpitas for a Supply of Treated Water**

CONTRACT BETWEEN SANTA CLARA VALLEY WATER DISTRICT AND
FOR A SUPPLY OF TREATED WATER

THIS CONTRACT is made and entered into on September 4, 1984, between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "District", and City of Milpitas, hereinafter referred to as "Contractor".

RECITALS:

A. District has executed contracts with the State of California Department of Water Resources and the United States Bureau of Reclamation, whereby District is and will be entitled to receive imported water and District intends to continue construction of a system within the boundaries of District to distribute water so received.

B. Included within said system are facilities to treat and filter such water; and Contractor is desirous of obtaining a supply of treated water from District.

AGREEMENT: For and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE A. INTRODUCTORY PROVISIONS

1. Definitions - When used in this contract, the following terms shall have the meanings hereinafter set forth:

- a) "Fiscal Year" shall mean each 12-month period during the term hereof commencing July 1 of one year and terminating June 30 of the next succeeding year, both dates inclusive.
- b) "Each Contractor", or "Other Contractor", shall mean any entity, public or private, contracting with District for a supply of treated water.
- c) The "Act" shall mean the Santa Clara Valley Water District Act, as amended.
- d) "Board" shall mean the Board of Directors of the Santa Clara Valley Water District.

2. Term of Contract

- a) This contract shall become effective on the date first above written and shall remain in effect for a period of 70 years or until all loans and all bonds, the proceeds of sale of which have been used for the construction of water treatment and distribution facilities have been retired, whichever period shall be longer, provided, however, that in no event shall the term of this contract be deemed to extend beyond the period authorized by law.

- b) The term of this contract may be extended for an additional term of years upon such terms and conditions as may be set forth in a written agreement of the parties hereto executed at least eighteen (18) months prior to expiration of the terms specified in the preceding Subsection 2a. If no such agreement shall be so executed, this contract shall terminate as specified in said Subsection 2a unless at least one year prior to said termination date Contractor shall notify District in writing that Contractor desires to extend the term hereof; in such event, said term shall be extended for an additional period of five years upon the covenants, agreements and conditions herein contained.

3. Successors and Assigns - Subject to the provisions of the succeeding Section 4 hereof, this contract and all the terms, covenants, agreements and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

4. Assignment - ~~No assignment or transfer by Contractor of this contract or any part hereof or of any rights hereunder or interest herein of Contractor, shall be valid unless approved by District~~ which approval District agrees shall not be unreasonably withheld. The foregoing provisions of this Section 4 to the contrary notwithstanding, no consent shall be required on an assignment to a Public Agency with the power of eminent domain; provided, such Public Agency expressly assumes the obligations of this contract and provided, further, that if said Public Agency assumes only a portion of the obligations of this contract, Contractor shall remain obligated for the remainder, or in the event Contractor shall sell, transfer or convey any part or parts of its water system to any entity, public or private, Contractor may assign to the purchaser thereof a portion of Contractor's rights, privileges and obligations hereunder and, in the event of any such assignment, Contractor shall be relieved of such portion of such obligations of Contractor so assigned if, following such sale, transfer or conveyance, District shall commence to furnish treated water to such entity, or District under a contract with such entity existing prior to such sale, transfer or conveyance increases the amount of treated water delivered to such entity in order to meet in part the increased water requirements of such entity resulting from such sale, transfer or conveyance.

5. Adjustment of Schedule Purchases upon Other Water Service to Projected Service Area - Where Contractor has prepared and submitted a proposed water delivery schedule to District for an ensuing three-year period in accordance with Article B hereof in reasonable anticipation of and reliance upon projected water service by Contractor to its existing or future customers who receive or would receive service within a service area which shall be defined and may be amended from time to time by Contractor and attached hereto, as Exhibit A, and the schedule has been approved and made binding upon Contractor in accordance with Article B hereof, and where, in lieu of Contractor, any agency, public or private shall thereafter provide treated water service to any such customers and the existence of such circumstance and the necessity of Contractor to reduce its delivery schedule being shown to District and acknowledged by District to be facts (such acknowledgment to be in no case unreasonably withheld), then Contractor's said delivery schedule shall at its option be amended promptly in such manner as to reduce Contractor's scheduled water purchases from District hereunder by an amount fairly commensurate with such reduction of Contractor's anticipated or projected water service.

ARTICLE B. WATER SERVICE PROVISIONS

1. Water Delivery Schedules

- a) On October 15, 1986, and every three years thereafter, Contractor shall submit in writing a proposed delivery schedule for the ensuing three-year period beginning July 1 of the following year. The proposed delivery schedule shall be submitted on a form provided by the District and shall indicate the amounts of treated water desired by Contractor during each year of the ensuing three-year period. Except as provided in Subsection c of this section, Contractor agrees that in submitting a proposed water delivery schedule it will not request an amount of water for each year which shall be less in total than 95 percent of the amount for the fiscal year containing the maximum amount in the then current three-year schedule unless Contractor shall have assigned or agreed to assign a portion of its rights, privileges, and obligations hereunder pursuant to the provisions of Article A, Section 4, hereof and i) District has consented to such assignment, or ii) Contractor otherwise shall have been relieved of a portion of its obligations hereunder pursuant to the provisions of said Article A, Section 4; that following occurrence of either event specified in the preceding clauses i) and ii), the foregoing provisions of this Subsection a) shall apply only to the unassigned portion of the Contractor's rights and obligations hereunder.
- b) Upon receipt of such delivery schedule, District shall review same, and after consultation with Contractor and Other Contractors receiving treated water from District, shall approve such schedule or make such reductions therein as are consistent with District's ability to deliver water to Contractor and Other Contractors; provided, however, that subject to availability of funds, financing policies, construction schedules, and operating schedules, District will make every reasonable effort to approve each proposed delivery schedule submitted by Contractor and Other Contractors. Except as provided in Subsection c of this section, District agrees that it will approve a delivery schedule for said ensuing schedule period which will not be less in total amount for each fiscal year of said schedule period than 95 percent of the maximum fiscal year set forth in the then current schedule period.
- c) Notwithstanding the provisions of Subsections a and b of this section, either Contractor or District may request that the minimum amount of water for each fiscal year in the ensuing three-year schedule period be reduced to a lesser minimum amount than prescribed in Subsections a and b. Upon written agreement by both Contractor and District, based on a showing of extraordinary circumstances, the delivery schedule may be approved at such lesser amount.
- d) The approved delivery schedule shall be transmitted to Contractor prior to December 31 of the year in which the proposed delivery schedule is submitted. The prospective delivery schedule for fiscal years 1987-88 through 1989-90 is set forth in Exhibit B, attached hereto and by this reference made a part hereof.

- e) For operating and planning purposes, Contractor shall, on forms provided by District, annually supply District with Contractor's anticipated monthly delivery schedules for the ensuing year and such information reasonably needed by District to determine projected annual deliveries for the next ensuing five years. Contractor's anticipated monthly delivery schedules shall not constitute a commitment by Contractor to receive the amounts of water set forth therein but shall establish the monthly schedule amounts of treated water to be delivered to Contractor for certain purposes under Article C hereof.

10/7/84 per Bob
Howard
(395-0121)
city bonded to
3 yr. schedule
(attached) for
min. payment
& delivery.

2. Amounts of Water - Rates of Flow

- (a) District agrees to deliver to Contractor during each fiscal year or fractional fiscal year of this Contract, as the case may be, the amounts of treated water set forth on the approved delivery schedule for each year or fractional fiscal year, as the case may be.
- (b) District agrees to deliver to Contractor on demand in any month during the term of this contract at least 15 percent of the total amount of treated water which District has theretofore agreed to deliver to Contractor during the applicable fiscal year as shown on the approved delivery schedule.
- (c) District further agrees to provide facilities capable of delivering and will deliver the amounts of water prescribed by Subsections a and b of this section on demand of Contractor at rates of flow up to an instantaneous maximum flow rate equivalent to 205 percent of the then current annual volume shown on the approved delivery schedule expressed as an equivalent uniform flow rate over the full year for an aggregate of 72 hours in any month and for such additional hours in any month as District has the capability to deliver at said rate, provided that District, at such times during the remainder of such month when District does not have the capability to deliver at said rate, may reduce such rate to an instantaneous maximum flow rate not to exceed 180 percent of said annual volume expressed as an equivalent uniform flow rate over the full year.
- d) Notwithstanding the foregoing, during the period July 1, 1979 to June 30, 1990, District may limit the maximum flow rate for each Contractor to 180 percent of the then current annual volume of that Contractor shown on the approved water delivery schedule expressed as an equivalent uniform rate over the full year. District will give Contractor reasonable prior notice of any such proposed limit of maximum flow rate.

3. Delivery Structures

- a) Water delivered to Contractor pursuant to this contract shall be provided from District facilities through delivery structures to be located at such locations as may be mutually agreed upon. Such delivery structures shall be designed and constructed or caused to be constructed by District. Design and bid costs shall be subject to favorable review and approval by the Contractor prior to award of

be under no obligation to operate, maintain, repair, replace or relocate the same.

4. Measurement of Water Delivered - District shall measure all water delivered to Contractor and shall keep and maintain accurate and complete records thereof. For such purpose, District shall install, operate and maintain at all delivery structures such measuring devices and equipment as are satisfactory and acceptable to both parties.

5. Curtailment of Delivery During Maintenance Periods - District will make all reasonable effort to provide continuous service to Contractor but may temporarily discontinue or reduce the delivery of water to Contractor for the purpose of necessary investigation, inspection, maintenance, repair or replacement of any of the facilities necessary for the delivery of treated water to Contractor. District shall notify Contractor as far in advance as possible of any discontinuance or reduction and the estimated duration of such discontinuance or reduction. Recognizing that Contractor will rely on District for uninterrupted deliveries of water particularly during the high water consumption months each year, District agrees to use its best efforts throughout the term of this contract to make any such discontinuance or reduction in the delivery of water only during the period of November through March in any fiscal year. In the event of any discontinuance of or reduction in delivery of water, Contractor may elect to receive the amount of water which otherwise would have been delivered to it during such period under the approved water delivery schedule for that fiscal year at other times during such year, consistent with District's delivery ability considering the then current delivery schedules of all Other Contractors.

6. Suspension of Service Upon Default - In the event of any default by Contractor in the payment of any money required to be paid to District hereunder, District may, upon not less than three months' written notice to Contractor, suspend deliveries of water under this contract for so long as such default shall continue, provided, however, that during such period Contractor shall remain obligated to make all payments required under this contract and provided, further, that such delinquent amount shall accrue interest at the rate of one-half of one percent per month commencing on the due date of such delinquent amount and continuing until both the principal amount of such charges and the interest thereon are paid in full. Such suspension of delivery taken pursuant to this Section 6 shall not deprive District of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract. In the event of any disagreement between Contractor and District as to the amount of any bill rendered to Contractor by District, water service shall not be discontinued if the disputed amount thereof is placed on deposit with District. Such deposit shall not preclude review and adjustment of any water bill as set forth in Article C, Section 8, hereof.

7. Water Quality - District agrees that all water to be delivered by it to Contractor pursuant to the terms of this contract will be pure, palatable, wholesome, potable and healthful and that all such water will be of such quality that the same may be used for domestic purposes at the points of delivery thereof to Contractor without further treatment. District understands that Contractor is a public utility furnishing water to its customers for domestic purposes and that water to be delivered by it to Contractor hereunder will be delivered by Contractor to said customers. District agrees that its system shall be constructed and operated during the term hereof in accordance with a permit or permits, including temporary permits, to be issued by the State Department of Health Services, copies of which will be furnished to Contractor upon receipt by District. District agrees that the treated water to be delivered to Contractor

pursuant to this contract shall conform to the quality requirements set forth in the then current primary and secondary standards for domestic water quality and monitoring regulations adopted by the California State Department of Health. Should the need arise, District and Contractor will cooperate fully in adjusting their respective processes to the extent reasonably practicable, and provided such adjustments do not affect other Contractors, to aid the Contractor in conforming to such law within the Contractor's distribution system.

ARTICLE C. PAYMENT PROVISIONS

1. The payments to be made by Contractor and Each Contractor for delivery of treated water shall be a price per acre-foot based upon the pricing policy adopted by the Board, dated January 18, 1971, as from time to time amended, which is set forth in Exhibit D, attached hereto and by this reference made a part hereof, and shall be the total of the basic water charges and treated water surcharge as determined by the District Board for each period for which a rate schedule is effective.

2. In determining the above charges, the basic water charge shall be equal to District's groundwater charge for water other than agricultural water (said words "agricultural water" being defined in the Act) in Zone W-2, which shall be determined annually by the Board in accordance with the legal provisions and requirements of the Act; provided, however, that during each rate period the District will consider all anticipated costs for each such rate period and will endeavor to establish during the first year of such rate period a groundwater charge that is intended to remain constant for the full rate period.

3. District shall charge for the delivery of treated water in accordance with the rate schedule for water service as such rate schedule is established by the Board. The Board of Directors shall review said rate schedule every three years to determine whether the schedule is in accordance with the most recent and anticipated costs and revenues of District. Accordingly, the Board shall, on or about the second Tuesday in March 1981, but not later than April 15, 1981, establish a rate schedule for the rate period commencing July 1, 1981 through June 30, 1984, and shall follow said procedure for each ensuing three-year period. Each such rate schedule shall be prospective in operation, but shall provide for the recovery of expenditures to be recovered by the basic water charge and the treated water surcharge during the period said rates are in effect and any shortages of revenue for said expenditures that may have been experienced during the preceding rate periods. It is agreed that the rates to be so established shall not be unreasonable or arbitrary, shall be based upon reasonable estimates of costs and water deliveries and shall be the same for Contractor and Other Contractors and all other persons, public or private, purchasing treated water from District, regardless of the point of delivery of such water by District; District agrees to use its best efforts throughout the term of this contract to collect from Other Contractors, and such other persons in accordance with such rate schedules, the appropriate sums of money without deduction or offset according to the respective amounts of treated water delivered by the District.

4. Contractor shall pay District the rate or rates set forth on the rate schedules during the period said rate schedules are effective for all water delivered to the Contractor; provided, however, that Contractor shall pay District at least a minimum charge each year applicable to water scheduled to be delivered in such year, which minimum charge shall be based upon an amount of treated water equal to 90 percent of the total amount of treated water to be delivered to Contractor during that fiscal year as shown on the approved delivery schedule; provided, however, that if Contractor during

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any other year of the current rate schedule period has purchased water in excess of 90 percent of the water scheduled to be delivered to Contractor during such other year, such delivery in excess of 90 percent for such other year may be used as a credit against ~~years in such rate schedule period in which Contractor received less than 90 percent of~~ the treated water as shown on the approved delivery schedule, and if Contractor has paid, pursuant to such annual minimum charge, for water not delivered to it, Contractor shall have the right to receive such undelivered water without additional payment during the remainder of the then current rate schedule period at times when District has the delivery capability provided further, however, that:

- a) If in any day of any year during the term hereof, District, for any reason, including reduced deliveries pursuant to the provisions of Article D hereof, shall be unable to deliver treated water to Contractor in an amount equal to 1/30 of the then current monthly scheduled amount as set forth in Article B, Section 1(e) as expressed as a uniform daily volume, the then minimum charge for that year shall be based upon an amount of water as calculated above in Section 4 reduced by an amount equal to the reduction required by District for each day a reduced delivery is required.
- b) If in any day of any year during the term hereof District shall offer to deliver to Contractor water which shall fail to meet the quality requirements set forth in Article B, Section 7, hereof, then Contractor shall have the right to refuse to accept or reduce deliveries of water from District until such time as such water shall meet said quality requirements. In such event Contractor shall immediately notify District, and confirm in writing within 5 days of the beginning of any such period. In any such year the then minimum charge shall be reduced by an amount equal to the volume of water reduced by the Contractor up to an amount equal to 1/30 of the then current monthly scheduled amount as set forth in Article B, Section 1(e), as expressed as a uniform daily volume for each day that water service is so refused or reduced by the Contractor. If Contractor at any time, or from time to time during the term hereof, should have the right to refuse to accept water from District by reason of the foregoing provisions of this Subsection 4b, but should nevertheless fail to exercise such right, such failure shall in no event be deemed to waive or limit exercise of such right by Contractor. Except as set forth by the foregoing provisions of this Section 4, Contractor shall not be obligated to pay for any water not accepted by it. Nothing contained in this Section 4 shall in any way be deemed to limit Contractor's obligation to pay for all water accepted by it from District in accordance with the appropriate rate set forth from time to time in District's then applicable rate schedule.
- c) If in any year during the term hereof, the Board of Directors of District shall by Resolution place in effect a water reduction program in excess of 10 percent of normal usage, the monthly scheduled amounts or portions thereof, as set forth in Article B, Section 1e, for that portion of the year when such water reduction program is in effect shall be reduced by the same percentage as required by the water reduction program less 10 percent. The Contractor shall be notified in writing of such water reduction program.

5. Surplus - If District shall determine, in accordance with sound accounting practice, that the aggregate of the revenues received by it in any fiscal year, or any rate period, during the term hereof a) from the sale of treated water to Contractor and Other Contractors, b) from the sale of raw water, and c) through collection of the groundwater charges referred to in Article E hereof, has exceeded District's costs and expenses during such year, or rate period, District shall retain such excess and reserve the same for purchases of raw water, construction, maintenance or operation of existing or additional facilities for the importation, conservation, treatment or wholesale distribution of water, reduce its scheduled price of treated water or, subject to the provisions of the Act, reduce said groundwater charges. It is understood that the object in computing rates under this contract is to cover the costs related to the importation, conservation, treatment or wholesale distribution of water.

6. Non-Contract Water - The term "non-contract water" refers to treated water found by District to be available for delivery to the treated water contractors in addition to the scheduled amounts. Non-contract water may be available only at such times and such prices as determined by the District. District will notify Contractor in writing thereof. Deliveries of non-contract water to Contractor will only be made after Contractor has purchased 100 percent of the monthly scheduled amount as set forth in Article B, Section 1(e). Further, at the end of each fiscal year an adjustment in billing will be made and Contractor will be required to have paid for 100 percent of the approved delivery scheduled amount, less any other adjustments before the purchase of non-contract water is allowed. During any period in which non-contract water is not available and Contractor takes water in excess of its scheduled amount, such water will not be reclassified and will be charged for at the full contract price. Water taken in excess of scheduled amounts during periods when non-contract water is not available may be credited as a part of Contractor's minimum annual charge.

7. Billings - Billings shall be made monthly as follows: On or about the first of each month District will send to Contractor a bill calculated in accordance with the provisions of Article C hereof for all treated water accepted by Contractor from District during the preceding month. The final bill for each fiscal year shall include any sums due for the minimum charge required by Article C, Section 4, hereof. District shall make every effort to make required meter readings on the last day of each calendar month, but District shall be entitled to make such readings three days prior to the close of any calendar month or within five days after the beginning of any calendar month.

8. Time and Method of Payment - Payments shall be made by Contractor to District within twenty (20) days after billing by District. In the event that Contractor in good faith contests the accuracy of any bill submitted to it pursuant to this contract, it shall give District notice thereof at least five (5) days prior to the day upon which payment of the stated amount is due. To the extent that District finds Contractor's contentions regarding the statement to be correct, it shall revise the statement accordingly and Contractor shall make payment of the amounts on or before the due date. To the extent that District does not find Contractor's contentions to be correct or where time is not available for a review of such contentions prior to the due date, Contractor shall pay the billed amount on or before the due date and may make the contested part of such payment under protest and seek to recover the amount in question from District.

ARTICLE D. AVAILABILITY OF WATER

1. In any year in which there may occur a water shortage by reason of drought or other temporary cause in the supply of water available for delivery to all users,

District shall, before reducing other deliveries of water, reduce, or if necessary cease, to the extent permitted by the operation of District's facilities consistent with its obligations to receive water pursuant to the State and/or Federal Contract, all deliveries of untreated water for recharge of groundwaters.

2. If, despite such reduction or cessation of such deliveries of untreated water for groundwater recharge pursuant to the provisions of the preceding Section 1, a further reduction in deliveries shall become necessary if the treated water requirements set forth on the approved delivery schedule of Contractor and Other Contractors are to be met, District shall, before reducing deliveries to Contractor and Other Contractors, reduce the total amount of agricultural water (as defined in the Act) released to others for surface delivery during such fiscal year by an amount equal to the following: namely, the average of the releases of such surface-delivered agricultural water during the preceding three fiscal years multiplied by the percentage by which District's total receipt of water from State and Federal sources for agricultural use (as such use is defined in the State and Federal Contracts) is reduced in such year pursuant to provisions of said contracts.

3. If any reduction in deliveries of treated water shall become necessary following reductions in untreated water pursuant to the provisions of the preceding Sections 1 and 2, District shall reduce deliveries of treated water to Contractor and Other Contractors in an amount which bears the same proportion to the total amount of such reduction that the amount included in such treated water user's approved delivery schedule bears to the total of the amount included in the approved delivery schedule of Contractor and Other Contractors for that fiscal year, all as determined by District; provided that District may apportion on some other basis if such is required to meet minimum demands for domestic supply, fire protection, or sanitation during the year. District agrees to notify Contractor in writing promptly in the event any such reduction in deliveries to Contractor and Other Contractors shall be decided upon and concurrently of the amount of such reduction and of any changes in Contractor's approved delivery schedule.

4. District shall not be liable for failure to deliver water to Contractor hereunder in the amounts hereinabove provided if such failure shall be caused by drought or any other reason beyond the reasonable control of District.

5. District shall give Contractor written notice as far in advance as possible of any reduction in deliveries of treated water which may be necessary because of a shortage in water supply.

ARTICLE E. GROUNDWATER CHARGE

District agrees that in establishing or modifying the boundaries of any zone pursuant to the provisions of the Act, it will not act in an unreasonable, arbitrary, capricious or discriminatory manner. District further agrees that it will use its best efforts throughout the term of this contract to collect, without deduction or offset, from all persons operating groundwater-producing facilities (as said words are defined in Section 26.1 of the Act) the groundwater charges at the rates per acre-foot of water then applicable in the zone of the District in which each such facility is located.

ARTICLE F. REMEDIES

By reason of the specialized nature of the water service to be rendered, and for the further reason that the extent of any damage caused to either party by the other by

reason of any breach of this contract may be extremely difficult to determine, it is agreed by the parties hereto that an action for damages is an inadequate remedy for any breach, and that specific performance, without precluding any other remedy available in equity or at law, will be necessary to furnish either party hereto with an adequate remedy for the breach hereof.

ARTICLE G. GENERAL PROVISIONS

1. Amendments - This Contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law. District agrees that in the event of legally enforceable action by a cognizant governmental body, either a) producing a prospective change in the volume of use of water by Contractor's customers, as by the imposition of an order suspending new services, or b) requiring reuse of wastewater or forbidding or limiting the discharge of wastewater into San Francisco Bay, District will make such amendments to Exhibit B of this contract as the circumstances may reasonably and equitably require.

2. Challenge of Laws - Nothing herein contained shall be construed as stopping or otherwise preventing Contractor or District from contesting by litigation or other lawful means the validity, constitutionality, construction, or application of any law of this State, any ordinance of District, or any rule, regulation or practice of District or Contractor.

3. Waiver of Rights - Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any other default or matter. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

4. Notices - All notices or other writings in this contract provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered, or certified, postage prepaid, and addressed as follows:

To District:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

To Contractor:

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California 95035

The address to which any notice or other writing may be given or made or sent to either party may be changed upon written notice given by such party as above provided.

5. Separability - If any one or more of the covenants or agreements set forth in this contract on the part of District or Contractor, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in nowise affect the validity of this contract.

6. Paragraph Headings - Paragraph headings in this contract are for convenience only and are not to be construed as a part of this contract or in any way limiting or amplifying the provisions hereof.

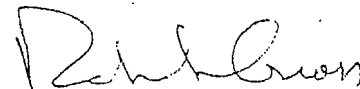
7. Other Contracts - District agrees that each contract for the supply of treated water hereafter entered into by District with any Other Contractor shall contain provisions substantially similar to those herein set forth and shall not contain any provisions of a material nature more favorable to the Other Contractor than the provisions herein applicable to the Contractor.

IN WITNESS WHEREOF, District has caused this contract to be executed by the Chairman of its Board of Directors and caused its Official Seal to be hereunto affixed and Contractor has caused these presents to be executed on
19 , by its duly authorized officer.

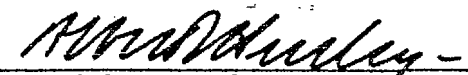
ATTEST: SUSAN A. EKSTRAND


Clerk of the Board of Directors


SANTA CLARA VALLEY WATER DISTRICT

By 
Chairman of the Board of Directors
"District"

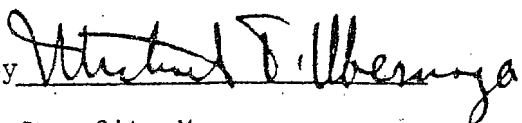
Approved as to form:


General Counsel, Santa Clara
Valley Water District

ATTEST:


Mayor

CITY OF MILPITAS

By 
Its City Manager
"Contractor"

Approved as to form:


Attorney for Contractor.

Attachment B

Santa Clara Valley Water District's Comments on Draft Assessment

March 14, 2006

Darryl Wong
Utility Engineer
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Subject: Comments regarding the Murphy Ranch Residential Project Draft Water Supply Assessment dated March 2006

Dear Mr. Wong:

Santa Clara Valley Water District (District) staff received an electronic copy of the above referenced draft Water Supply Assessment (WSA) on February 28, 2006, via email. The District has reviewed the document and provides the following general and specific comments:

GENERAL COMMENTS

The District is the primary water wholesaler in Santa Clara County. The District's has a commitment to ensure that water supply is reliable to meet future demands in Santa Clara County, consistent with the County's and cities' General Plans and other appropriate regional and statewide projections. To meet this commitment, the District needs to continue to invest in maintaining existing water supply, infrastructure, and programs. In addition, the District's 2005 Urban Water Management Plan (UWMP) calls for increased water conservation, water recycling, as well as investment in new supplies to meet demand through 2030.

There are many significant assumptions in this WSA that need to be clarified. It is important for the report to discuss the assumptions and their impact on future water supply. For example, provision of water supply to meet new growth as projected in the District's 2005 Urban Water Management Plan UWMP is based upon many assumptions that are documented in the plan. There are also risks associated with demographic projections, availability of water resources, and climate change. Additionally, studies will need to be completed to look at capacity and infrastructure issues on the east side of Santa Clara Valley to address long-term reliability. Funding for many long-term water supply capital projects has not been secured. These issues should be discussed in the WSA.

Based on previous treated water distribution system modeling analysis, the District will reach system capacity under peak demand conditions on the East Side treated water system within the next 20 years. Additional capital investments will be evaluated as part of the District's infrastructure master planning and long-term water supply planning processes. To reduce overall demand for potable water supply, new developments should implement conservation to

the maximum extent practicable in accordance with District policies. Practices/technologies that should be considered include but are not limited to:

- Construction standards that require high-efficiency fixtures (for example, high-efficiency 1.2 gallons-per-flush toilets and high-efficiency washing machines);
- Construction standards that require high-efficiency devices for outdoor water uses (such as self-adjusting weather-based irrigation controllers – also known as “Smart Controllers”);
- Metering or sub-metering for each individual unit;
- Enforcement of the City’s Model Efficient Landscape Ordinance (as per AB 325 1990);
- Promotion and use of drought tolerant and native plantings in landscaping;
- “On-demand” water softeners (if planning to install water softeners);
- Water Efficient Model Homes.

The Murphy Ranch development should maximize the use of recycled water and consider dual plumbing for toilet flushing, where possible. These measures provide an element of drought-proofing of supplies in extreme dry weather situations, when potable supplies may be reduced.

The document makes numerous references to the 2005 Urban Water Management Plan (UWMP), but it is unclear if the particular reference is to the City of Milpitas document or the Santa Clara Valley Water District (District) 2005 UWMP. Please clarify.

Reference to the “SCVWD service area” is confusing. A different designation should be used. This is the area within the Milpitas retailer service area which is supplied with water from District wholesale water supplies.

SPECIFIC COMMENTS

Page 2, Table 1: Consider the use of recycled water for both irrigation and other uses as discussed above in the general comments section.

Page 3, Wholesale supply: change “a treated water transmission pipeline” to “treated water transmission pipelines”

Page 5, Project Demand: change “(158 Ac-Ft)” to “(158 Ac-Ft per year)”.

Page 6, first paragraph after Table 7: “Some or all of the landscape irrigation may be served by recycled water. A determination will be made when preliminary site plans are available.” Please elaborate on the criteria that will be used to make this determination.

Page 6, Table 9 – Projected Water Demand: Add units to this table.

Page 7, 3. SUPPLY AND DEMAND COMPARISON FOR NORMAL, SINGLE DRY AND MULTIPLE DRY YEAR’S SUPPLY, second paragraph: Append or add as a new paragraph the following information: “The net increase in demand of 169 acre-feet per year associated with the proposed development was not included in the analysis performed for the District’s 2005 UWMP. This and other incremental increases in demand, when aggregated, have the potential cumulative effects to change the composition and timing of required future investments. Further

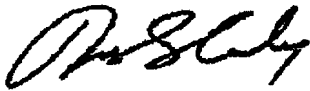
analysis, within the structure of the District's long term planning framework, is required to better define specific projects and project timing in order for the District to meet demands in the future. In addition, provision of water supply to meet new growth is based upon assumptions (listed in the District 2005 UWMP) and funding for many long-term water supply projects and infrastructure projects has not been secured."

Page 7, 3. SUPPLY AND DEMAND COMPARISON FOR NORMAL, SINGLE DRY AND MULTIPLE DRY YEAR'S SUPPLY, third paragraph: please delete the following: "The SCVWD will supplement county wide SFPUC supply shortfalls during single-dry and multiple-dry water years with additional groundwater supplies." Please refer to the assumptions in the District's 2005 UWMP. Although the District may plan to meet this shortfall, there are many factors that come into play regarding the provision of additional water to SFPUC customers. The funding necessary to address this shortfall has not been secured.

Page 8, Conclusion, first paragraph: "In addition, the SCVWD has adequate resources to offset a 20% supply reduction which may occur within the SFPUC service area under multiple-dry year conditions." This statement is incorrect Please refer to the assumptions in the District's 2005 UWMP. Although the District may plan to meet this shortfall, there are many factors that come into play regarding the provision of additional water to SFPUC customers. The funding necessary to address this shortfall has not been secured.

We appreciate the opportunity to comment on this water supply assessment and look forward to continued coordination on the development of similar long term water supply planning projects. Please contact me at 408-265-2607, extension 2877 or email me at jcrowley@valleywater.org, if you have any questions or comments regarding this letter.

Sincerely,



James S. Crowley
Engineering Unit Manager
Water Supply Sustainability Planning

JSC:jo

Appendix A

Chapter 643, Statutes of 2001 (Senate Bill 610)

Chapter 643, Statutes of 2001 (Senate Bill 610)

An act to amend Section 21151.9 of the Public Resources Code, and to amend Sections 10631, 10656, 10910, 10911, 10912, and 10915 of, to repeal Section 10913 of, and to add and repeal Section 10657 of, the Water Code, relating to water. Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) The length and severity of droughts in California cannot be predicted with any accuracy.
 - (2) There are various factors that affect the ability to ensure that adequate water supplies are available to meet all of California's water demands, now and in the future.
 - (3) Because of these factors, it is not possible to guarantee a permanent water supply for all water users in California in the amounts requested.
 - (4) Therefore, it is critical that California's water agencies carefully assess the reliability of their water supply and delivery systems.
 - (5) Furthermore, California's overall water delivery system has become less reliable over the last 20 years because demand for water has continued to grow while new supplies have not been developed in amounts sufficient to meet the increased demand.
 - (6) There are a variety of measures for developing new water supplies including water reclamation, water conservation, conjunctive use, water transfers, seawater desalination, and surface water and groundwater storage.
 - (7) With increasing frequency, California's water agencies are required to impose water rationing on their residential and business customers during this state's frequent and severe periods of drought.
 - (8) The identification and development of water supplies needed during multiple-year droughts is vital to California's business climate, as well as to the health of the agricultural industry, environment, rural communities, and residents who continue to face the possibility of severe water cutbacks during water shortage periods.
 - (9) A recent study indicates that the water supply and land use planning linkage, established by Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code, has not been implemented in a manner that ensures the appropriate level of communication between water agencies and planning agencies, and this act is intended to remedy that deficiency in communication.
- (b) It is the intent of the Legislature to strengthen the process pursuant to which local agencies determine the adequacy of existing and planned future water supplies to meet existing and planned future demands on those water supplies.

SEC. 2. Section 21151.9 of the Public Resources Code is amended to read:

21151.9. Whenever a city or county determines that a project, as defined in Section 10912 of the Water Code, is subject to this division, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

SEC. 3. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

- (a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be

based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the amount and location of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the location, amount, and sufficiency of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

- (1) An average water year.
- (2) A single dry water year.
- (3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses:

- (A) Single-family residential.
- (B) Multifamily.
- (C) Commercial
- (D) Industrial.
- (E) Institutional and governmental.
- (F) Landscape.
- (G) Sales to other agencies.
- (H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.
- (I) Agricultural.

(2) The water use projections shall be in the same five-year increments as described in subdivision (a). (f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

- (A) Water survey programs for single-family residential and multifamily residential customers.
- (B) Residential plumbing retrofit.
- (C) System water audits, leak detection, and repair.
- (D) Metering with commodity rates for all new connections and retrofit of existing connections.
- (E) Large landscape conservation programs and incentives.
- (F) High-efficiency washing machine rebate programs.
- (G) Public information programs.
- (H) School education programs.
- (I) Conservation programs for commercial, industrial, and institutional accounts.
- (J) Wholesale agency programs.
- (K) Conservation pricing.
- (L) Water conservation coordinator.
- (M) Water waste prohibition.
- (N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of such savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and non-economic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single dry, and multiple dry water years. The description shall identify specific projects and include a description of the increase

in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

SEC. 3.5. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years. For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses:

- (A) Single-family residential.
- (B) Multifamily.
- (C) Commercial.
- (D) Industrial
- (E) Institutional and governmental.
- (F) Landscape.
- (G) Sales to other agencies.
- (H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.
- (I) Agricultural.

(2) The water use projections shall be in the same five-year increments as described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

- (A) Water survey programs for single-family residential and multifamily residential customers.
- (B) Residential plumbing retrofit.
- (C) System water audits, leak detection, and repair.
- (D) Metering with commodity rates for all new connections and retrofit of existing connections.
- (E) Large landscape conservation programs and incentives.
- (F) High-efficiency washing machine rebate programs.
- (G) Public information programs.
- (H) School education programs.
- (I) Conservation programs for commercial, industrial, and institutional accounts.
- (J) Wholesale agency programs.
- (K) Conservation pricing.
- (L) Water conservation coordinator.
- (M) Water waste prohibition.
- (N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single dry, and multiple dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).
SEC. 4. Section 10656 of the Water Code is amended to read:

10656. An urban water supplier that does not prepare, adopt, and submit its urban water management plan to the department in accordance with this part, is ineligible to receive funding pursuant to Division 24 (commencing with Section 78500) or Division 26 (commencing with Section 79000), or receive drought assistance from the state until the urban water management plan is submitted pursuant to this article.

SEC. 4.3. Section 10657 is added to the Water Code, to read:

10657. (a) The department shall take into consideration whether the urban water supplier has submitted an updated urban water management plan that is consistent with Section 10631, as amended by the act that adds this section, in determining whether the urban water supplier is eligible for funds made available pursuant to any program administered by the department.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 4.5. Section 10910 of the Water Code is amended to read:

10910. (a) Any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) under Section 21080 of the Public Resources Code shall comply with this part.

(b) The city or county, at the time that it determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to the California Environmental Quality Act pursuant to Section 21080.1 of the Public Resources Code, shall identify any water system that is, or may become as a result of supplying water to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project. If the city or county is not able to identify any public water system that may supply water for the project, the city or county shall prepare the water assessment required by this part after consulting with any entity serving domestic water supplies whose service area includes the project site, the local agency formation commission, and any public water system adjacent to the project site.

(c) (1) The city or county, at the time it makes the determination required under Section 21080.1 of the Public Resources Code, shall request each public water system identified pursuant to subdivision (b) to determine whether the projected water demand associated with a proposed project was included as part of the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610).

(2) If the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan, the public water system may incorporate the requested information from the urban water management plan in preparing the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g).

(3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

(4) If the city or county is required to comply with this part pursuant to subdivision (b), the water supply assessment for the project shall include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

(d) (1) The assessment required by this section shall include an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and a description of the quantities of water received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts.

(2) An identification of existing water supply entitlements, water rights, or water service contracts held by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall be demonstrated by providing information related to all of the following:

(A) Written contracts or other proof of entitlement to an identified water supply.

(B) Copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.

(C) Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply.

(D) Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

(e) If no water has been received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts, the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall also include in its water supply assessment pursuant to subdivision (c), an identification of the other public water systems or water service contract-holders that receive a water supply or have existing water supply entitlements, water rights, or water service contracts, to the same source of water as the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has identified as a source of water supply within its water supply assessments.

(f) If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

(1) A review of any information contained in the urban water management plan relevant to the identified water supply for the proposed project.

- (2) A description of any groundwater basin or basins from which the proposed project will be supplied. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current bulletin of the department that characterizes the condition of the groundwater basin, and a detailed description by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), of the efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.
- (3) A detailed description and analysis of the amount and location of groundwater pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.
- (4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.
- (5) An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project. A water supply assessment shall not be required to include the information required by this paragraph if the public water system determines, as part of the review required by paragraph (1), that the sufficiency of groundwater necessary to meet the initial and projected water demand associated with the project was addressed in the description and analysis required by paragraph (4) of subdivision (b) of Section 10631.
- (g) (1) Subject to paragraph (2), the governing body of each public water system shall submit the assessment to the city or county not later than 90 days from the date on which the request was received. The governing body of each public water system, or the city or county if either is required to comply with this act pursuant to subdivision (b), shall approve the assessment prepared pursuant to this section at a regular or special meeting.
- (2) Prior to the expiration of the 90-day period, if the public water system intends to request an extension of time to prepare and adopt the assessment, the public water system shall meet with the city or county to request an extension of time, which shall not exceed 30 days, to prepare and adopt the assessment.
- (3) If the public water system fails to request an extension of time, or fails to submit the assessment notwithstanding the extension of time granted pursuant to paragraph (2), the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of this part relating to the submission of the water supply assessment.
- (h) Notwithstanding any other provision of this part, if a project has been the subject of a water supply assessment that complies with the requirements of this part, no additional water supply assessment shall be required for subsequent projects that were part of a larger project for which a water supply assessment was completed and that has complied with the requirements of this part and for which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has concluded that its water supplies are sufficient to meet the projected water demand associated with the proposed project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses, unless one or more of the following changes occurs:
- (1) Changes in the project that result in a substantial increase in water demand for the project.

(2) Changes in the circumstances or conditions substantially affecting the ability of the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), to provide a sufficient supply of water for the project.

(3) Significant new information becomes available which was not known and could not have been known at the time when the assessment was prepared.

SEC. 5. Section 10911 of the Water Code is amended to read:

10911. (a) If, as a result of its assessment, the public water system concludes that its water supplies are, or will be, insufficient, the public water system shall provide to the city or county its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. If the city or county, if either is required to comply with this part pursuant to subdivision (b), concludes as a result of its assessment, that water supplies are, or will be, insufficient, the city or county shall include in its water supply assessment its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. Those plans may include, but are not limited to, information concerning all of the following:

(1) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies.

(2) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.

(3) Based on the considerations set forth in paragraphs (1) and (2), the estimated timeframes within which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), expects to be able to acquire additional water supplies.

(b) The city or county shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (a), in any environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) The city or county may include in any environmental document an evaluation of any information included in that environmental document provided pursuant to subdivision (b). The city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

SEC. 6. Section 10912 of the Water Code is amended to read:

10912. For the purposes of this part, the following terms have the following meanings:

(a) "Project" means any of the following:

(1) A proposed residential development of more than 500 dwelling units.

(2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(4) A proposed hotel or motel, or both, having more than 500 rooms.

(5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(6) A mixed-use project that includes one or more of the projects specified in this subdivision.

(7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(b) If a public water system has fewer than 5,000 service connections, then "project" means any proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections, or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(c) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(1) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(2) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

SEC. 7. Section 10913 of the Water Code is repealed.

SEC. 8. Section 10915 of the Water Code is amended to read:

10915. The County of San Diego is deemed to comply with this part if the Office of Planning and Research determines that all of the following conditions have been met:

(a) Proposition C, as approved by the voters of the County of San Diego in November 1988, requires the development of a regional growth management plan and directs the establishment of a regional planning and growth management review board.

(b) The County of San Diego and the cities in the county, by agreement, designate the San Diego Association of Governments as that review board.

(c) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C.

(d) The regional growth management strategy includes a water element to coordinate planning for water that is consistent with the requirements of this part.

(e) The San Diego County Water Authority, by agreement with the San Diego Association of Governments in its capacity as the review board, uses the association's most recent regional growth forecasts for planning purposes and to implement the water element of the strategy.

(f) The procedures established by the review board for the development and approval of the regional growth management strategy, including the water element and any certification process established to ensure that a project is consistent with that element, comply with the requirements of this part.

(g) The environmental documents for a project located in the County of San Diego include information that accomplishes the same purposes as a water supply assessment that is prepared pursuant to Section 10910.

SEC. 9.

Section 3.5 of this bill incorporates amendments to Section 10631 of the Water Code proposed by both this bill and AB 901. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 10631 of the Water Code, and (3) this bill is enacted after AB 901, in which case Section 3 of this bill shall not become operative.

SEC. 10.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Appendix B

Chapter 642, Statutes of 2001 (Senate Bill No. 221)

Chapter 642, Statutes of 2001 (Senate Bill No. 221)

An act to amend Section 11010 of the Business and Professions Code, and to amend Section 65867.5 of, and to add Sections 66455.3 and 66473.7 to, the Government Code, relating to land use. Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.

The people of the State of California do enact as follows:

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

- (1) The name and address of the owner.
- (2) The name and address of the subdivider.
- (3) The legal description and area of lands.
- (4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.
- (5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.
- (6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.
- (7) A true statement of the use or uses for which the proposed subdivision will be offered.
- (8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.
- (9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.
- (10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.
- (11) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.
(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice

of intention and application for issuance of a public report immediately shall provide the department with the name, address, and telephone number of that district.

(12) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision.

(13) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(14) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(15) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

SEC. 2. Section 65867.5 of the Government Code is amended to read:

65867. 5. (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

SEC. 3. Section 66455.3 is added to the Government Code, to read:

66455. 3. Not later than five days after a city or county has determined that a tentative map application for a proposed subdivision, as defined in Section 66473.7, is complete pursuant to Section 65943, the local agency shall send a copy of the application to any water supplier that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the subdivision.

SEC. 4. Section 66473.7 is added to the Government Code, to read:

66473. 7. (a) For the purposes of this section, the following definitions apply:

(1) "Subdivision" means a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections, "subdivision" means any proposed residential development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Sufficient water supply" means the total water supplies available during normal, single-dry, and multiple-dry years within a 20- year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining "sufficient water supply," all of the following factors shall be considered:

(A) The availability of water supplies over a historical record of at least 20 years.

(B) The applicability of an urban water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

(C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with Section 354 of the Water Code.

(D) The amount of water that the water supplier can reasonably rely on receiving from other water supply projects, such as conjunctive use, reclaimed water, water conservation, and water transfer, including programs identified under federal, state, and local water initiatives such as CALFED and Colorado River tentative agreements, to the extent that these water supplies meet the criteria of subdivision (d).

(3) "Public water system" means the water supplier that is, or may become as a result of servicing the subdivision included in a tentative map pursuant to subdivision (b), a public water system, as defined in Section 10912 of the Water Code, that may supply water for a subdivision.

(b) (1) The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, shall include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request.

(2) If the public water system fails to deliver the written verification as required by this section, the local agency or any other interested party may seek a writ of mandamus to compel the public water system to comply.

(3) If the written verification provided by the applicable public water system indicates that the public water system is unable to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision, then the local agency may make a finding, after consideration of the written verification by the applicable public water system, that additional water supplies not accounted for by the public water system are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(4) If the written verification is not provided by the public water system, notwithstanding the local agency or other interested party securing a writ of mandamus to compel compliance with this section, then the local agency may make a finding that sufficient water supplies are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(c) The applicable public water system's written verification of its ability or inability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision as required by subdivision (b) shall be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:

(1) The public water system's most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) A water supply assessment that was completed pursuant to Part 2. 10 (commencing with Section 10910) of Division 6 of the Water Code.

(3) Other information relating to the sufficiency of the water supply that contains analytical information that is substantially similar to the assessment required by Section 10635 of the Water Code.

(d) When the written verification pursuant to subdivision (b) relies on projected water supplies that are not currently available to the public water system, to provide a sufficient water supply to the subdivision, the written verification as to those projected water supplies shall be based on all of the following elements, to the extent each is applicable:

- (1) Written contracts or other proof of valid rights to the identified water supply that identify the terms and conditions under which the water will be available to serve the proposed subdivision.
- (2) Copies of a capital outlay program for financing the delivery of a sufficient water supply that has been adopted by the applicable governing body.
- (3) Securing of applicable federal, state, and local permits for construction of necessary infrastructure associated with supplying a sufficient water supply.
- (4) Any necessary regulatory approvals that are required in order to be able to convey or deliver a sufficient water supply to the subdivision.
- (e) If there is no public water system, the local agency shall make a written finding of sufficient water supply based on the evidentiary requirements of subdivisions (c) and (d) and identify the mechanism for providing water to the subdivision.
- (f) In making any findings or determinations under this section, a local agency, or designated advisory agency, may work in conjunction with the project applicant and the public water system to secure water supplies sufficient to satisfy the demands of the proposed subdivision. If the local agency secures water supplies pursuant to this subdivision, which supplies are acceptable to and approved by the governing body of the public water system as suitable for delivery to customers, it shall work in conjunction with the public water system to implement a plan to deliver that water supply to satisfy the long-term demands of the proposed subdivision.
- (g) The written verification prepared under this section shall also include a description, to the extent that data is reasonably available based on published records maintained by federal and state agencies, and public records of local agencies, of the reasonably foreseeable impacts of the proposed subdivision on the availability of water resources for agricultural and industrial uses within the public water system's service area that are not currently receiving water from the public water system but are utilizing the same sources of water. To the extent that those reasonably foreseeable impacts have previously been evaluated in a document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the National Environmental Policy Act (Public Law 91-190) for the proposed subdivision, the public water system may utilize that information in preparing the written verification.
- (h) Where a water supply for a proposed subdivision includes groundwater, the public water system serving the proposed subdivision shall evaluate, based on substantial evidence, the extent to which it or the landowner has the right to extract the additional groundwater needed to supply the proposed subdivision. Nothing in this subdivision is intended to modify state law with regard to groundwater rights.
- (i) This section shall not apply to any residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses, or where the immediate contiguous properties surrounding the residential project site are, or previously have been, developed for urban uses, or housing projects that are exclusively for very low and low-income households.
- (j) The determinations made pursuant to this section shall be consistent with the obligation of a public water system to grant a priority for the provision of available and future water resources or services to proposed housing developments that help meet the city's or county's share of the regional housing needs for lower income households, pursuant to Section 65589.7.
- (k) The County of San Diego shall be deemed to comply with this section if the Office of Planning and Research determines that all of the following conditions have been met:
 - (1) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C as approved

by the voters of the County of San Diego in November 1988, which required the development of a regional growth management plan and directed the establishment of a regional planning and growth management review board.

(2) Each public water system, as defined in Section 10912 of the Water Code, within the County of San Diego has adopted an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) of the Water Code.

(3) The approval or conditional approval of tentative maps for subdivisions, as defined in this section, by the County of San Diego and the cities within the county requires written communications to be made by the public water system to the city or county, in a format and with content that is substantially similar to the requirements contained in this section, with regard to the availability of a sufficient water supply, or the reliance on projected water supplies to provide a sufficient water supply, for a proposed subdivision.

(l) Nothing in this section shall preclude the legislative body of a city or county, or the designated advisory agency, at the request of the applicant, from making the determinations required in this section earlier than required pursuant to subdivision (a).

(m) Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service.

(n) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(o) Any action challenging the sufficiency of the public water system's written verification of a sufficient water supply shall be governed by Section 66499.37.

SEC. 5.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.